

June 21, 1989

REPORT TO THE COMMITTEE ON TRANSPORTATION AND LAND USE
VACATION OF UNNEEDED STREET RIGHT-OF-WAY - CONSIDERATION TO THE
CITY - POTENTIAL LEGISLATION

The City Council, in reviewing recent proposed street vacations, expressed an interest in considering potential state legislation which would allow the City to condition vacation of certain streets upon payment by the owner of the underlying fee of fair market value for the street area to be vacated.

Attached for your review and consideration is draft language adding section 8356.5 to the state Streets and Highways Code. You will note that the draft allows for a requirement of fair market consideration as a condition to the vacation of streets under circumstances where the street may, in accordance with the state law, be summarily vacated. Streets which may be vacated by the summary process are as follows:

1. Those streets which, for a period of five consecutive years, have been impassible for vehicular travel and for which no public money has been expended for maintenance during such five-year period.
2. Excess right-of-way width not required for street purposes.
3. Any portion of a street that lies within property under one ownership and does not continue through such ownership.

In addition, the draft language allows fair market consideration to be required in connection with vacating:

1. Deadend portions of streets which do not serve any but the immediately adjacent property owners;
2. "Paper" streets which are more than twenty years old and have never been improved; and

3. Unimproved streets which cannot, as a practical matter, be improved because of steep topographical condition.

We feel that limiting the streets for which consideration must be paid to the above situations would enhance the chances of obtaining successful legislation. In addition, since the above specified types of streets are clearly subject to a finding of non-necessity for either present or future public street needs, it is felt that any argument by an opponent to a street vacation claiming lack of objectivity in making the determination that the

street is not in fact needed, and that the City is merely "selling" street right-of-way, would not be logically supportable.

In your consideration of the draft legislation, it is recommended that you consider the following advantages and disadvantages.

Advantages

1. The City would receive potentially substantial amounts of money which could be utilized for necessary maintenance and improvement of the City's street system.
2. Amounts received as consideration for vacating unneeded streets could be used to acquire presently unfunded but needed right-of-way in other areas of the City.

Disadvantages

1. Unneeded City street right-of-way which should be vacated and placed back on the tax rolls may not be vacated since many property owners may be unwilling to pay fair market value as consideration for the vacated area.
2. In normal circumstances where property owners own each side of the right-of-way to be vacated own to the center of the right-of-way, one but not the other property owner may be willing to pay fair market consideration, resulting in a potential vacation of one half the street width.
3. Since the City has some responsibility with regard to the maintenance of street right-of-way as well as potential liability, any failure to vacate unneeded right-of-way, when such vacation is appropriate, is contrary to the City's best interest.
4. When property owners become aware of this change of City policy it will discourage donations of street and alley easements.

As was discussed in connection with the City Council review of recent street vacations, the vast majority of streets proposed for vacation were acquired through the subdivision process and no consideration for the streets was paid by the City. At present an owner of property wishing to have an adjacent street vacated is required to pay for the processing of the street vacation. The processing costs currently are a minimum of \$1,500 for City fees, plus private engineering costs which range from \$200 to \$3,000 or more. An additional \$500 City fee is assessed for street vacations which are reviewed by the Planning Commission.

There is a benefit to the City, as discussed above, in vacating streets which are truly unneeded, either presently or prospectively, for public street purposes. Requiring payment of

fair market value, in addition to processing and engineering fees, will, we feel, discourage property owners from processing proposed street vacations.

In summary, in reviewing the proposed legislation, it is recommended that the City consider both the advantages and disadvantages of charging fair market value in connection with vacating unneeded street right-of-way. Our recommendation is that the City not pursue the proposed legislation.

Respectfully submitted,

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Attachment

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